

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W. 2016 NOV 21 PM 7: 33  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6857

DATE COMPLAINTS FILED: July 28, 2014

DATES OF NOTIFICATION: Aug 4, 2014,  
Sept. 27, 2016<sup>1</sup>

LAST RESPONSE RECEIVED: Nov. 3, 2016

DATE ACTIVATED: July 22, 2016

EARLIEST SOL: June 28, 2019

LATEST SOL: July 15, 2019

ELECTION CYCLE: 2014

**COMPLAINANTS:**

Judy Brown  
Lawson Brouse

**RESPONDENTS:**

Marilinda Garcia for Congress and David Horan in  
his official capacity as treasurer  
Speedway Motorsports, Inc.  
New Hampshire Motor Speedway, Inc.  
Jerry Gappens  
Lucy Gappens

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)  
52 U.S.C. § 30118(b)  
11 C.F.R. § 100.52(d)(1)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Complainants allege that New Hampshire Motor Speedway, Inc. ("NHMS"), or its  
parent company, Speedway Motorsports, Inc. ("SMI"), paid for a campaign event for Marilinda

<sup>1</sup> Judy Brown and Lawson Brouse filed separate, very similar, three-page Complaints with the Commission, both of which arrived on the same day. Based on these striking similarities, both were inadvertently designated as MUR 6857, and respondents were notified only of the Complaint Brown filed ("Brown Complaint"). Upon recent discovery of this discrepancy, respondents were immediately notified of the Complaint Brouse filed ("Brouse Complaint").

1 Garcia for Congress ("Committee") that was held at NHMS in June 2014, and thus made a  
2 corporate contribution in violation of the Federal Election Campaign Act of 1971, as amended  
3 (the "Act"). The Complainants also allege that the Committee failed to properly report the  
4 expenses for this campaign event.

5 Respondents acknowledge a corporate contribution by NHMS and related misreporting  
6 by the Committee. Accordingly, as discussed below, we recommend that the Commission find  
7 reason to believe that NHMS made, and the Committee accepted, a corporate contribution in  
8 violation of 52 U.S.C. § 30118(a), and that Jerry Gappens, an officer of NHMS, impermissibly  
9 consented to the making of NHMS's corporate contribution. We further recommend that the  
10 Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing  
11 to properly report receipts and disbursements related to the campaign event. We recommend that  
12 the Commission enter into pre-probable cause conciliation with the Committee, NHMS, and  
13 Jerry Gappens. We also recommend that the Commission find no reason to believe that SMI  
14 violated 52 U.S.C. § 30118(a) by making a corporate contribution. Finally, we recommend that  
15 the Commission find no reason to believe that Lucy Gappens violated the Act.

## 16 II. FACTUAL AND LEGAL ANALYSIS

### 17 A. Factual Background

18 Marilinda Garcia was a candidate for election in the Second Congressional District of  
19 New Hampshire in 2014.<sup>2</sup> The Complainants state that the Committee held a "Race for  
20 Congress" fundraiser event at NHMS ("the event"), and the expenses related to the event  
21 included rental of the venue, live music, food, a raffle prize of two "VIP Access" tickets to an  
22 upcoming NASCAR race, and, for "Gold Member" ticket holders, pace car rides around the  
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<sup>2</sup> Garcia won the Republican primary election and lost the general election.

1 speedway.<sup>3</sup> The Complainants allege that the Committee did not report any receipts or  
2 disbursements related to this event on its disclosure reports, other than in-kind contributions from  
3 Jerry Gappens and his wife, Lucy Gappens, for \$2,600 and \$2,320, respectively.<sup>4</sup> The  
4 Complaints identify Jerry Gappens as Executive Vice President and General Manager of SMI,  
5 the parent company of NHMS.<sup>5</sup> Further, the Complaints maintain that Jerry Gappens does not  
6 own NHMS, and SMI cannot legally make a contribution to a federal candidate.<sup>6</sup> Thus, the  
7 complaints, reasonably construed, allege that SMI, NHMS's corporate parent, and not the  
8 Gappens, made the in-kind contributions, and such corporate contributions are prohibited under  
9 the Act. Finally, the Complainants allege that the Committee failed to properly report receipts  
10 and disbursements related to the event.<sup>7</sup>

11 The Committee responds that Jerry Gappens set up the event at NHMS, and he agreed to  
12 donate a number of NASCAR race tickets, pace car rides, food, and beverages for the event.<sup>8</sup>  
13 The Committee explained to Gappens that the donation could not be from NHMS, but had to be  
14 a personal donation.<sup>9</sup> The Committee maintains that it required in-kind contributors to sign an

<sup>3</sup> Brown Compl. at 1 and Ex. 1; Brouse Compl. at 1 and Ex. 1. The tickets were \$100 for "Gold Members," \$35 for "Blue Members" and \$15 for "kids." See Ex. 1 of both Complaints.

<sup>4</sup> Brown Compl. at 1 and Brouse Compl. at 1. The Committee's original 2014 July Quarterly Report discloses that the contributions from the Gappens were "in-kind." See 2014 July Quarterly Report at 16-17 (July 15, 2014). The Committee's Amended 2014 July Quarterly Report discloses that these contributions were for "event tickets, food and beverages." See Amended 2014 July Quarterly Report at 17 (Sept. 17, 2014).

<sup>5</sup> Brown Compl. at 1 and Brouse Compl. at 1..

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Committee Resp. to Brown Compl. at 1. In response to the Brouse Complaint, the Committee stated that in light of the similarity between the two complaints, it would not be supplementing its answer to the Brown Complaint.

<sup>9</sup> *Id.*

1 "in-kind" donation acknowledgement form.<sup>10</sup> The Committee asserts that it sent the form to  
2 NHMS, but NHMS did not return it. On the day of the event, Jessica Ferreira, an NHMS  
3 employee who served as the event coordinator, sent an email to the Committee stating that all  
4 donations were compliments of Jerry Gappens.<sup>11</sup> Furthermore, the Committee maintains that  
5 "compliments of Jerry Gappens" was printed on the tickets given to campaign supporters.<sup>12</sup>

6 The Committee further asserts that NHMS told it that the event costs were \$4,920, and  
7 Lucy Gappens could be considered as a second donor.<sup>13</sup> The Committee duly reported in-kind  
8 contributions of \$2,600 from Jerry Gappens and \$2,320 from Lucy Gappens.<sup>14</sup> Additionally, the  
9 Committee maintains that after receiving the complaint, it learned that Jerry Gappens did not pay  
10 for the tickets and other items donated for the event, and that the Committee would have to pay  
11 for the expenses.<sup>15</sup> The Committee stated that after paying these expenses, it would amend its  
12 2014 July Quarterly Report by deleting the contributions from the Gappens and reporting  
13 payment to NHMS for the event expenses.<sup>16</sup> However, it never paid the expenses or amended its  
14 reports.

15 SMI, NHMS, Jerry Gappens and Lucy Gappens ("Joint Respondents") responded jointly  
16 to the Complaints asserting that SMI is a corporation, its principal place of business is in  
17 Charlotte, North Carolina, it owns NHMS and other race tracks, and it was unaware of the event

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<sup>10</sup> *Id.* at 2 and attached donor form.

<sup>11</sup> Committee Resp. to Brown Compl. at 2 and attached email.

<sup>12</sup> Committee Resp. to Brown Compl. at 2 and attached copy of the ticket.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

1 until it received the Brown Complaint.<sup>17</sup> The Joint Respondents contend that SMI and NHMS  
2 did not intend to contribute food and race tickets to the Committee, NHMS did not sponsor the  
3 event, and there was a misunderstanding between Jerry Gappens, NHMS's Executive Vice  
4 President and General Manager, and the Committee as to who was responsible for the food and  
5 race tickets.<sup>18</sup> The Joint Respondents explain that NHMS did not send an invoice to the  
6 Committee, as promised, and Gappens left his position with NHMS in September 2015.<sup>19</sup> The  
7 Joint Respondents assert that on October 27, 2016, NHMS delivered an invoice for \$4,485 to the  
8 Committee for certain event costs.<sup>20</sup> The Joint Respondents maintain that Lucy Gappens did not  
9 provide an in-kind contribution to the Committee, did not attend the event, and was not aware of  
10 it.<sup>21</sup> Finally, the Joint Respondents request pre-probable cause conciliation.<sup>22</sup>

11 **B. Legal Analysis**

12 The Act defines "contribution" to include "any gift, subscription, loan, advance, or  
13 deposit of money or anything of value made by any person for the purpose of influencing any  
14 election for Federal office."<sup>23</sup> "Anything of value" includes all in-kind contributions and, unless  
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<sup>17</sup> Joint Resp. to Brown Compl. at 1 and Joint Resp. to Brouse Compl. at 1. NHMS is incorporated in the State of New Hampshire.

<sup>18</sup> Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

<sup>19</sup> Joint Resp. to Brouse Compl. at 2.

<sup>20</sup> *Id.* and attached invoice.

<sup>21</sup> Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

<sup>22</sup> Joint Resp. to Brown Compl. at 3 and Joint Resp. to Brouse Compl. at 3.

<sup>23</sup> 52 U.S.C. § 30101(8)(A)(i).

1 otherwise exempted, the provision of any goods or services without charge or at a charge that is  
2 less than the usual and normal charge for such goods or services.<sup>24</sup>

3 The Act and Commission regulations prohibit corporations from making contributions to  
4 a federal political committee (other than independent-expenditure-only political committees)<sup>25</sup>  
5 and further prohibit any officer or director of any corporation from consenting to any such  
6 contribution by the corporation.<sup>26</sup> Likewise, a candidate or political committee is prohibited  
7 from knowingly accepting or receiving corporate contributions.<sup>27</sup>

8 The Act requires committee treasurers to file reports of receipts and disbursements in  
9 accordance with the provisions of 52 U.S.C. § 30104.<sup>28</sup> These reports must include, *inter alia*,  
10 the total amount of receipts and disbursements, including the appropriate itemizations, where  
11 required.<sup>29</sup>

12 The available information indicates that NHMS, not Jerry and Lucy Gappens, made an  
13 in-kind contribution to the Committee of certain event costs because NHMS's corporate  
14 resources were used for this campaign event. Thus, there is reason to believe that NHMS made a  
15 prohibited contribution to the Committee. Further, the record shows that the Committee, despite  
16 learning in late 2014 that NHMS, not the Gappens, paid the event costs, did not refund the

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<sup>24</sup> 11 C.F.R. § 100.52(d)(1).

<sup>25</sup> See Advisory Op. 2010-11 (Commonsense Ten) (concluding that corporations and unions may make unlimited contributions to independent-only political action committees because "independent expenditures do not lead to, or create the appearance of *quid pro quo* corruption") (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)).

<sup>26</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>27</sup> *Id.*

<sup>28</sup> 52 U.S.C. § 30104(a)(1).

<sup>29</sup> 52 U.S.C. § 30104(b).

1 contribution or amend its reports to accurately report the event costs. As of the date of this  
2 General Counsel's Report, the Committee's 2014 July Quarterly Report still lists Jerry and Lucy  
3 Gappens as the contributors.

4 We therefore recommend that the Commission find reason to believe that NHMS made,  
5 and the Committee knowingly accepted, a corporate contribution in violation of 52 U.S.C.  
6 § 30118(a). Further, it appears that Jerry Gappens, an Executive Vice President and General  
7 Manager of NHMS,<sup>30</sup> was instrumental in NHMS's contribution because he agreed to donate  
8 certain event costs.<sup>31</sup> It appears, then, that as an officer of NHMS, Jerry Gappens consented to  
9 NHMS's contribution to the Committee. Thus, we recommend that the Commission find reason  
10 to believe that Jerry Gappens violated 52 U.S.C. § 30118(a) by consenting to a corporate  
11 contribution.

12 The Committee misreported the contribution from NHMS as a \$4,920 in-kind  
13 contribution from Jerry and Lucy Gappens and has not corrected its Report. We therefore  
14 recommend that the Commission find reason to believe that the Committee violated 52 U.S.C.  
15 § 30104(b).

16 SMI is the parent company of NHMS, and the Joint Responses assert that prior to the  
17 Complaints, SMI was unaware of the event, and the available information does not suggest that  
18 SMI was involved in the event. Therefore, we recommend that the Commission find no reason  
19 to believe that SMI violated 52 U.S.C. § 30118(a).

20 Finally, we recommend that the Commission find no reason to believe that Lucy Gappens  
21 violated the Act in this matter because the available information does not indicate she had any

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<sup>30</sup> NHMS's 2014 Annual Report filed with the New Hampshire Secretary of State's Office lists Jerry Gappens as an officer. 2014 Annual Report (Mar. 10, 2014) at <https://www.sos.nh.gov/imaging/14905448.pdf>.

<sup>31</sup> See Committee Resp, Exs. (Acknowledgement on race ticket: "Compliments of Jerry Gappens").

1 involvement here. It seems likely that \$2,320 of the total contribution was wrongly attributed to  
2 her merely because she is married to Jerry Gappens, who was subject to the contribution limit of  
3 \$2,600.<sup>32</sup>

32 See Committee Resp. to Brown Compl. at 2; 52 U.S.C. § 30116(a)(1)(A).



**IV. RECOMMENDATIONS**

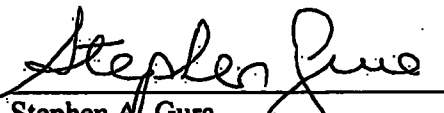
1. Find reason to believe that Marilinda Garcia for Congress and David Horan in his official capacity as treasurer violated 52 U.S.C. § 30118(a) and 52 U.S.C. § 30104(b);
2. Find reason to believe that New Hampshire Motor Speedway, Inc., violated 52 U.S.C. § 30118(a);
3. Find reason to believe that Jerry Gappens violated 52 U.S.C. § 30118(a);
4. Find no reason to believe that Speedway Motorsports Inc., violated 52 U.S.C. § 30118(a);
5. Find no reason to believe that Lucy Gappens violated the Act in this matter;
6. Close the file as to Speedway Motorsports, Inc., and Lucy Gappens;


7. Approve the attached Factual and Legal Analyses;
8. Enter into conciliation with Marilinda Garcia and David Horan in his official capacity as treasurer prior to a finding of probable cause to believe;
9. Enter into conciliation with New Hampshire Motor Speedway, Inc., and Jerry Gappens prior to a finding of probable cause to believe;
10. Approve the attached conciliation agreements; and
11. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Acting Associate General Counsel

11.21.16  
Date

  
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